

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. AF 11-0765

DRAFT

IN RE THE RECOMMENDATION FOR)	REPORT AND
A PRO BONO REQUIREMENT FOR)	RECOMMENDATION OF THE
ADMISSION TO THE MONTANA BAR)	ACCESS TO JUSTICE COMMISSION

In accordance with this Court's order of September 9, 2012, the Access to Justice Commission (ATJC) designated a committee to study a proposal to establish a requirement that applicants to the Montana bar must complete fifty hours of pro bono service within three years before they are admitted to the Bar. The Committee included representatives of the ATJC, a student and a member of the faculty of the University of Montana School of Law, members of the judiciary and court staff, legal staff of the Montana Legal Services Association, and representatives of the State Bar of Montana.

Over the course of the year, the Committee has gathered extensive information from other states that have adopted or have considered adopting a similar requirement; reviewed the curricula and clinical programs of the University of Montana and the pro bono service requirements of other law schools; researched current pro bono and self-help support efforts and programs operating in Montana; conducted a survey of law school students and faculty; and participated in discussions with the Commission on Character and Fitness, the Board of Bar Examiners, and the State Bar staff. The Committee also obtained and considered a white paper presented in October 2013 by the ABA Standing Committee on Pro Bono and Public Service regarding the potential pros and cons of New York's 50-hour preadmission pro bono rule.

After thorough analysis and numerous meetings, the Committee presented its recommendation to the ATJC at its November 25, 2013 meeting. Following discussion, the ATJC voted to approve the recommendations and to present them to the Court for an appropriate period of public comment and consideration at a public meeting of the Court. The recommendations are attached to this report and submitted herewith.

In summary, the ATJC has concluded that the paramount twin goals of serving Montanans' unmet legal needs and establishing in law school a culture of service that will endure throughout a lawyer's career will best be met by taking an approach different from that adopted in New York. The ATJC proposes an alternative approach that it believes will promote pro bono service by bar applicants, will bring emphasis to the professional responsibility each lawyer has to provide legal services to those unable to pay, and will help build, on a sustainable basis, a bridge from law school to law practice so that students begin with productive pro bono experiences and proper training before they are asked to do it on their own. The attached recommendation includes a reporting requirement, rather than a service requirement, coupled with a signature program at the University of Montana School of Law to be developed under the auspices of a standing committee of the ATJC working in partnership with the law school and others.

The experience of New York and other states convinces the ATJC that simply imposing a 50-hour requirement will not meet the objectives of the Court or best serve the administration of justice for several reasons, among which are the following.

First, implementation of New York's rule has resulted in a very broad definition of "pro bono service" that encompasses nearly all clinical and volunteer work of a law student, and even some paid work. Most Montana law students already would meet a 50-hour service requirement if the rule were adopted with similar definitions here, thereby accomplishing little while inadvertently diluting the definition of "pro bono publico" reflected in Rule 6.1 of the Rules of Professional Conduct.

Second, simply adopting the requirement without making sure that bar applicants have the education and opportunity to provide meaningful service could result in frustration among law students unable to find appropriate means by which to fulfill the requirement; could impose a new burden on the law school without making sure the school is prepared to meet it; and could tax the resources of existing legal services programs—especially those based in Missoula, where the law school is located—who already are experiencing funding shortfalls and may not be able to assume the additional administrative responsibility of supervising a host of law students. For law students to enter the practice of law with

enthusiasm for pro bono service, they will need to have productive and positive experiences with the pro bono work they perform in law school.

Finally, it would ill-serve the public if students are inadequately prepared or mentored in their pro bono work, and failing to tailor the service to the goals of Rule 6.1 will not achieve the goal of delivering legal services to those who most need them. The ATJC also recognizes that persons not yet admitted to the bar cannot practice law, and that a system needs to be in place for those persons to perform meaningful law-related public service that will serve the objectives of the rule.

With these views in mind, the ATJC commends its working group for developing a recommendation tailored to the needs and opportunities that exist in Montana. The Commission submits the attached recommendation for the Court's consideration and approval.

DATED this _____ day of November, 2013.

For the Access to Justice Commission,

Chair